

EXHIBIT 6

1
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RAVGEN, INC.,)
Plaintiff,) C.A. No. 20-1734-MN-JLH
v.)
ILLUMINA, INC., et al.,)
Defendants.)

Wednesday, March 29, 2023
3:00 p.m.

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE JENNIFER L. HALL
United States District Court Judge

APPEARANCES:

FARNAN, LLC
BY: JOSEPH FARNAN, ESQ.

-and-

DESMARAIS, LLP
BY: BRIAN MATTY, ESQ.

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2 McCARTER & ENGLISH, LLP
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4 WILMER HALE
5 BY: MICHAEL SUMMERSGILL, ESQ.
BY: AMANDA MAJOR, ESQ.
6 BY: ERIC HANSON, ESQ.

7 Counsel for Biora

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2 ASHBY & GEDDES, P.A.
3 BY: ANDREW MAYO, ESQ.

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5 WEIL, GOTSHAL & MANGES, LLP
6 BY: DEREK WALTER, ESQ.

7 Counsel for Illumina and
Verinata Health

8 RICHARDS, LAYTON & FINGER, P.A.
9 BY: CHRISTINE HAYNES, ESQ.
BY: FRED COTTRELL, ESQ.

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11 WILMER HALE
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BY: CHRISTOPHER NOYES, ESQ.
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BY: BRIAN JACOBSEMEYER, ESQ.

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17 BY: JONATHAN SWISHER, ESQ.

18 Counsel for Ariosa, Roche
and FMI

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24 Counsel for Myriad

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1 THE COURT: Good afternoon,
2 everyone. This is Jennifer Hall. We're here
3 for a dispute teleconference. These are a
4 number of cases filed by Ravgen. Let's make our
5 appearances then for the record. Let's start
6 with Ravgen versus Illumina 20-1644, let's have
7 appearances for plaintiff.

8 MR. FARNAN: Good afternoon, Your
9 Honor. This is Joseph Farnan from Farnan LLC.

10 On the phone for Ravgen we have John Desmarais,
11 Brian Matty from Desmarais LLC and Ravinder
12 Dhallan and John Barney from Ravgen.

13 THE COURT: Good afternoon to all
14 of you. And the Illumina defendants.

15 MR. MAYO: Yes. Good afternoon,
16 Your Honor. Andrew Mayo from Ashby & Geddes on
17 behalf of Illumina and Verinata Health. I'm
18 joined on the phone today by my co-counsel,
19 Derek Walter from Weil Gotshal.

20 THE COURT: Good afternoon to both
21 of you. How about Ariosa, Roche and FMI.

22 MS. HAYNES: Good afternoon, Your
23 Honor. This is Christine Haynes from Richards,
24 Layton & Finger on behalf of Ariosa, Roche

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1 examiner considered to be material. It seems to
 2 me that the standard to be applied in
 3 determining whether a reference is but for
 4 material is not whether the particular examiner
 5 or particular PTAB panel considered it to be but
 6 for material, rather it's that of a reasonable
 7 examiner and the Court usually has an obligation
 8 to reach an independent conclusion as to
 9 materiality and validity.

10 Whether plaintiff's argument is a
 11 winner in a case where the alleged omitted
 12 reference is argued to disclose limitations that
 13 render a claim obvious or anticipated I do not
 14 know and need not decide here. That is because
 15 the circumstances here are that the alleged
 16 omitted references pertain to unexpected
 17 results. The record before the Court reflects
 18 that the PTAB never assessed unexpected results
 19 because it found that the obviousness
 20 combinations at issue in the IPR did not
 21 disclose all of the claim limitations or that
 22 there were no motivation to combine those
 23 references. It seems to me to be at least
 24 theoretically possible that validity of the

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1 claims might turn on unexpected results and the
 2 alleged omitted references might be but for
 3 material on that issue.

4 Therefore, I reject plaintiff's
 5 first argument that defendants will never be
 6 able to show but for materiality.

7 In addition, as we've discussed
 8 during the hearing today, at least some of the
 9 defendant's inequitable conduct arguments aren't
 10 based solely on omission. They are also based
 11 on misrepresentations and I cannot say on this
 12 record that those claims are futile.

13 Plaintiff's second argument is
 14 that defendants have failed to plausibly plead
 15 intent because the Therasense case says that
 16 when there are multiple inferences that can be
 17 drawn intent to deceive cannot be found.
 18 Plaintiff is right about the substantive legal
 19 standard, but plaintiff is wrong that Therasense
 20 is a pleading standard. Pleading inequitable
 21 conduct is governed by rule 9(b) and there is no
 22 requirement that plaintiff plead facts
 23 demonstrating that intent to deceive is the most
 24 reasonable inference.

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1 Defendant's cited a case during
 2 argument today that wasn't in the papers that
 3 supposedly stands for that proposition. I have
 4 not read that case, but if it says what
 5 defendants says, I agree with that. That is my
 6 understanding of the law.

7 Plaintiff's third argument is that
 8 discovery on inequitable conduct is onerous and
 9 that it should not be allowed in view of the
 10 futility of defendant's pleading. I agree with
 11 plaintiff, that inequitable conduct discovery
 12 can be onerous, but I disagree that the
 13 pleadings are futile.

14 Because I reject plaintiff's
 15 arguments regarding futility, defendants are
 16 granted leave to add the inequitable conduct
 17 allegations.

18 And just to be clear for the
 19 record, all I've determined today is that
 20 inequitable conduct has been plausibly pleaded.

21 I also grant the motions with
 22 respect to defendant's proposed affirmative
 23 defense of license release and exhaustion. As
 24 for those defenses, the third circuit says that

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1 a timely motion seeking to add an affirmative
 2 defense should generally be allowed absent undue
 3 surprise or prejudice to plaintiff. There is no
 4 basis on this record to conclude that undue
 5 surprise or prejudice by allowing those defenses
 6 to be added. Plaintiff says that the defenses
 7 are futile, but the federal rule only require
 8 defenses to be stated in general terms and to
 9 give the plaintiff fair notice of the nature of
 10 the defense. The proposed pleadings here do
 11 that.

12 Again, during oral argument
 13 defendants cited a case that wasn't in their
 14 papers to my knowledge that supposedly stands
 15 for that proposition. I have not read that case
 16 either, but if it says what defendants says, I
 17 also agree with that and that is my
 18 understanding of the law.

19 And moreover, having looked at the
 20 factual allegations regarding the license
 21 defense, I cannot say on this record that the
 22 defenses or the declaratory judgment claims that
 23 are associated with the license argument are
 24 futile. And I agree with defendants that it

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1 would be inappropriate to resolve the question
2 of the effect of the Ravgen TSPLA in this
3 procedural posture.

4 And that concludes the Court's
5 ruling on the pending motions. Okay. That will
6 concludes the hearing today. Thank you.

7 (End at 4:31 p.m.)

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1 State of Delaware)
2)
2 New Castle County)

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5 CERTIFICATE OF REPORTER

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7 I, Stacy M. Ingram, Certified Court Reporter
8 and Notary Public, do hereby certify that the
9 foregoing record, Pages 1 to 66 inclusive, is a true
10 and accurate transcript of my stenographic notes
11 taken on March 29, 2023, in the above-captioned
12 matter.

13

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and seal this 29th day of March 2023, at
16 Wilmington.

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19 /s/ Stacy M. Ingram
20 Stacy M. Ingram, CCR

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